

DOCKET FILE COPY ORIGINAL

RECEIVED

BEFORE THE  
Federal Communications Commission  
WASHINGTON, D.C.

JAN 20 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Interconnection and Resale	)	CC Docket 94-54
Obligations Pertaining to	)	DA 97-2558
Commercial Mobile Radio Services	)	

REPLY COMMENTS OF THE  
CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION

Andrea D. Williams  
Assistant General Counsel

Michael F. Altschul  
Vice President, General Counsel

Randall S. Coleman  
Vice President for  
Regulatory Policy and Law

CELLULAR TELECOMMUNICATIONS  
INDUSTRY ASSOCIATION  
1250 Connecticut Avenue, N.W.  
Suite 200  
Washington, D.C. 20036  
(202) 785-0081

January 20, 1998

No. of Copies rec'd  
List A B C D E

0210

**BEFORE THE  
Federal Communications Commission  
WASHINGTON, D.C.**

In the Matter of	)	
	)	
Interconnection and Resale	)	CC Docket 94-54
Obligations Pertaining to	)	DA 97-2558
Commercial Mobile Radio Services	)	

**REPLY COMMENTS OF THE  
CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION**

The Cellular Telecommunications Industry Association ("CTIA")<sup>1</sup> respectfully submits these reply comments in the above mentioned proceeding.<sup>2</sup>

In its comments, the Telecommunications Resellers Association ("TRA") proposes federally mandated resale of facilities-based CMRS roaming services and suggests that the Commission order facilities-based CMRS carriers to provide resellers with the capabilities to offer roaming services.<sup>3</sup>

---

<sup>1</sup> CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service ("CMRS") providers, and includes forty-eight of the fifty largest cellular and broadband PCS providers. CTIA represents more broadband PCS carriers and more cellular carriers than any other trade association.

<sup>2</sup> See In the Matter of Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, CC Docket 94-54, "Commission Seeks Additional Comment on Automatic Roaming Proposals for Cellular, Broadband PCS, and Covered SMR Networks", Public Notice (released December 5, 1997) ("Public Notice").

<sup>3</sup> See In the Matter of Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services,

TRA also repeats its time-worn arguments that facilities-based CMRS carriers have control over bottleneck facilities,<sup>4</sup> and that CMRS resellers have a "right" under Sections 201(b) and 202(a) of the Communications Act to automatic roaming agreements with facilities-based CMRS carriers.<sup>5</sup>

The Commission, however, should recognize TRA's resale roaming proposal for what it really is -- a thinly veiled attempt to have the Commission address the issue of unbundled interconnection, including the reseller switch proposal, notwithstanding the Commission's decision to defer such issues to the CMRS-CMRS interconnection portion of this docket.<sup>6</sup> Furthermore, the Commission's deferral of these issues is the subject of litigation pending before the U.S. Court of Appeals for the D.C. Circuit.<sup>7</sup> Having chosen to appeal this issue to the Court of Appeals, the Commission properly should defer considering TRA's proposal until

---

CC Docket 94-54, Additional Comments on Automatic Roaming of the Telecommunications Resellers Association ("TRA Comments") ii (filed Jan. 5, 1998).

<sup>4</sup> TRA Comments at 2-5.

<sup>5</sup> TRA Comments at 6.

<sup>6</sup> See In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN 93-252, Memorandum Opinion and Order on Partial Reconsideration of Second Report and Order, ("Order on Partial Reconsideration") 11 FCC Rcd 19729, 19736 (1996).

<sup>7</sup> Nat'l Wireless Resellers Ass'n., et al. v. Fed. Communications. Comm'n, Case No. 97-1071, (DC Cir. 1997).

resolution of the pending appeal in Federal court.<sup>8</sup> CTIA believes that: (1) the unbundled interconnection issues associated with the TRA request fall within the CMRS-CMRS interconnection portion of this proceeding; (2) the Commission should examine unbundled interconnection issues in consideration of Section 251(a)(1) of the Telecommunications Act of 1996;<sup>9</sup> and 3) Sections 201(b) and 202(a) of the Communications Act do not provide resellers with an absolute right to either unbundled interconnection or automatic roaming agreements.

**I. TRA attempts to mask its unbundled interconnection issues which the Commission has judiciously deferred for resolution.**

In its comments, TRA proposes mandatory resale of facilities-based roaming services, assuming that it would be "relatively simple to implement" by loading blocks of telephone numbers and associated billing data into the CMRS carrier's switch.<sup>10</sup> TRA, however, fails to mention the fact

---

<sup>8</sup> TRA is the successor to the group formerly known as National Wireless Resellers Association.

<sup>9</sup> See In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 95-185, First Report and Order ("Local Competition First Report and Order"), 11 FCC Rcd 15499 (1996).

<sup>10</sup> TRA Comments at 12.

But see Order on Partial Reconsideration, 11 FCC Rcd at 19735, n.27 (citing to GTE's opposition to the reseller switch proposal which notes, "[I]nterconnection of reseller switches with cellular mobile telephone switching

that roaming is not supported within a carrier's switch, but rather is provided by linking carriers' HLRs and VLRs through a nationwide IS-41 signaling network.<sup>11</sup> Similarly, billing data associated with a customer mobile directory number (MDN), such as billing name and address (BNA), as well as call detail records, reside in billing systems that are separate from a carrier's switch. Therefore, the TRA proposal will require unbundled interconnection to CMRS carriers' adjunct processors and operating systems.

TRA circuitously proposes that the Commission decide the merits of its unbundled interconnection claims when the Commission has conscientiously decided to narrowly tailor the Public Notice to address automatic roaming issues.<sup>12</sup> The record confirms TRA's ongoing attempts to redefine the Commission's priorities with respect to when and how it addresses unbundled interconnection issues, including the reseller switch proposal and CMRS competition. For example,

---

stations...raise[s] difficult economic, policy, legal and technical issues of which it is better to defer consideration.") Id.

<sup>11</sup> The Home Location Register (HLR) includes information such as the mobile identification number, electronic serial number, subscribed service features, the subscriber's choice of long distance service, etc. The Visited Location Register (VLR) contains similar information and maintains a temporary copy of the subscriber's database record.

<sup>12</sup> "Having reviewed the comments received in this proceeding, we believe the record should be reopened to allow interested parties to provide updated comments on the Commission's *automatic roaming proposals*." Public Notice at 2 (emphasis added).

in the *CMRS Second Report and Order*, the Commission considered the same issues that TRA has raised in its comments, and the Commission correctly decided to defer consideration of such interconnection issues to a separate proceeding.<sup>13</sup> The Commission also concluded that its analysis of interconnection issues "must acknowledge that CMRS providers do not have control over bottleneck facilities."<sup>14</sup>

Despite TRA's insistence that the Commission immediately resolve the unbundled interconnection issues and revisit the issue of CMRS competition,<sup>15</sup> the Commission has correctly and consistently concluded that its consideration of the unbundled interconnection issues be deferred to its interconnection proceeding of this docket where a more

---

<sup>13</sup> See In the Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, Second Report and Order ("CMRS Second Report and Order"), 9 FCC Rcd 1411, 1499-1500

<sup>14</sup> Id.

<sup>15</sup> TRA sought reconsideration of the *CMRS Second Report and Order* and challenged the Commission's conclusion that CMRS providers do not have control over bottleneck facilities. CSI/ComTech, which supports TRA's views on this issue, specifically asked the Commission to resolve the unbundled interconnection issues on reconsideration. See In the Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, Petition for Reconsideration of the National Wireless Reseller Association ("NWRA"), 8-9 (filed May 19, 1994); Petition for Reconsideration of Cellular Service, Inc. and ComTech (CSI/ComTech), 15-16 (filed May 19, 1994).

thorough record can be developed to address the complex issues relating to interconnection.<sup>16</sup>

TRA is now asking the Commission -- through the back-door approach of its resale roaming proposal -- to resolve the unbundled interconnection issue at the same time that TRA's appeal of this issue is pending, without any consideration of the Commission's implementation of Section 251(a)(1) of the Communications Act, and without recognizing the Commission's authority to determine when and how it will proceed on these interconnection issues. Moreover, asking the Commission to resolve unbundled interconnection issues without affording interested parties, particularly new entrants, proper notice and an opportunity to comment on the specific issues is tantamount to asking the Commission to violate the notice and comment requirements of the Administrative Procedures Act.<sup>17</sup>

---

<sup>16</sup> In its Order on Partial Reconsideration, the Commission upheld its decision to defer consideration of the interconnection issues and denied NWRA's and CSI/ComTech's requests for reconsideration of the bottleneck control issue and for interim relief implementing the reseller switch proposal. See Order on Partial Reconsideration, 11 FCC Rcd at 19730, 19736.

<sup>17</sup> 5 U.S.C. §553 (1996).

**II. The Commission should examine unbundled interconnection issues, including the reseller switch proposal, in consideration of Section 251(a)(1) of the Telecommunications Act of 1996.**

The Commission should examine the unbundled interconnection issue and the reseller switch proposal under Section 251(a)(1).<sup>18</sup> Under Section 251(a)(1), each telecommunications carrier has an obligation to interconnect directly or indirectly with the facilities of other telecommunications carriers.<sup>19</sup> There are several significant issues that the Commission should examine with respect to the application of Section 251(a)(1) to the reseller switch proposal and unbundled interconnection. Such issues include whether a CMRS carrier has an obligation to interconnect directly or indirectly with a non-facilities based telecommunications carrier; whether a CMRS reseller is a "telecommunications carrier" under Section 251(a)(1); and whether a reseller that provides telecommunications service through direct interconnection with a CMRS carrier's switch should be treated as a common carrier.

---

<sup>18</sup> See Order on Partial Reconsideration, 11 FCC Rcd at 19734, n. 20.

Although the Commission noted that it would not address the relevancy of Section 251(a)(1) in its Order on Partial Reconsideration, it did not foreclose consideration of the Section 251(a)(1) in the pending Commission proceedings related to CMRS-CMRS interconnection or Local Competition.

<sup>19</sup> 47 U.S.C. § 251(a)(1) (1996).



**III. Resellers do not have a statutory right to automatic roaming agreements nor interconnection with CMRS carriers.**

In its comments, TRA implies incorrectly that Sections 201(b) and 202(a) of the Communications Act provides resellers with a statutory right to purchase and resell roaming services of a CMRS carrier.<sup>20</sup> While Section 201(b) provides for just and reasonable charges and practices in connection with a communication service, Section 202(a) prohibits unjust and unreasonable discrimination in charges, practices or services for or in connection with like communication service.<sup>21</sup> However, neither Section 201(b) nor Section 202(a) entitles a reseller to the type of roaming arrangements contemplated under the TRA roaming resale proposal. Furthermore, the Commission has stated clearly that it "do[es] not propose to regulate the prices that CMRS carriers may charge resellers (or anyone else) for roaming, other than perhaps to prohibit discrimination in the prices charged to similarly situated carriers."<sup>22</sup>

Moreover, the type of roaming services that TRA contemplates in its resale roaming proposal are more appropriately defined as unbundled elements of

---

<sup>20</sup> TRA Comments at 6.

<sup>21</sup> 47 U.S.C. §§ 201(b), 202(a) (1996).

<sup>22</sup> See In the Matter of Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54, Second Report and Order and Third Notice of Proposed Rulemaking, 11 FCC Rcd 9462, 9476 ¶23 (1996).

interconnection. While TRA has asserted that resellers are entitled to interconnection as a matter of statutory right under Section 201(a) and 332(c)(1)(B), the Commission has correctly determined that:

[t]he statutes on which [TRA and CSI/ComTech] rely do not require interconnection as a matter of right, but authorize the Commission to order interconnection only if finds, after opportunity for hearing, that interconnection is 'necessary or desirable in the public interest.'...Thus, [S]ection 201(a) grants to the Commission the discretion to decide when and to what extent it is in the public interest to order carriers to<sup>23</sup> provide interconnection to other carriers.

---


<sup>23</sup> See Nat'l Wireless Resellers Ass'n et al. v. Fed. Communications Comm'n, Case No. 97-1071, Brief for Respondents, 19, 34 (D.C. Cir. 1997); See also, Order on Partial Reconsideration, 11 FCC Rcd at 19734.

**Conclusion**

For the aforementioned reasons, CTIA respectfully requests that the Commission defers consideration of TRA's unbundled interconnection issues until resolution of the pending litigation of this matter. CTIA also recommends that the Commission defers the unbundled interconnection issues, including the reseller switch proposal, to the interconnection proceeding in this docket and consider such issues with respect to Section 251(a)(1). Finally, CTIA urges the Commission to determine that Sections 201 and 202 do not entitle resellers to roaming agreements or interconnection with CMRS carriers.

Respectfully submitted,

**CELLULAR TELECOMMUNICATIONS  
INDUSTRY ASSOCIATION**

  
Andrea D. Williams  
Assistant General Counsel

Michael F. Altschul  
Vice President, General Counsel

Randall S. Coleman  
Vice President for  
Regulatory Policy and Law

1250 Connecticut Avenue, N.W.  
Suite 200  
Washington, D.C. 20036  
(202) 785-0081

January 20, 1998

**Certificate of Service**

I, Cleveland Lawrence III, hereby certify that on the 20th day of January, 1998, I caused copies of the foregoing "Reply Comments of the Cellular Telecommunications Industry Association" to be sent by first class mail, postage prepaid, to the following:

Bruce E. Beard, Senior Counsel  
Southwestern Bell Mobile Systems, Inc.  
Pacific Bell Mobile Services  
13075 Manchester Road, 1st Floor  
St. Louis, MO 63131

Jeanne A. Fischer, Senior Counsel  
Southwestern Bell Mobile Systems, Inc.  
Pacific Bell Mobile Services  
13075 Manchester Road, 1st Floor  
St. Louis, MO 63131

Christopher W. Savage  
Cole, Raywid & Braverman, LLP  
1919 Pennsylvania Ave., NW  
Suite 200  
Washington DC 20006

Karlyn D. Stanley  
Cole, Raywid & Braverman, LLP  
1919 Pennsylvania Ave., NW  
Suite 200  
Washington DC 20006

Mark J. Golden  
PCIA  
500 Montgomery Street  
Suite 700  
Alexandria, VA 22314-1561

Mary Madigan  
PCIA  
500 Montgomery Street  
Suite 700  
Alexandria, VA 22314-1561

Caressa D. Bennet  
Bennet & Bennet, PLLC  
1019 Nineteenth Street, NW  
Suite 500  
Washington DC 20009

Michael R. Bennet  
Bennet & Bennet, PLLC  
1019 Nineteenth Street, NW  
Suite 500  
Washington DC 20009

Cheryl A. Tritt  
Morrison & Foerster, LLP  
2000 Pennsylvania Ave., NW  
Suite 5500  
Washington DC 20006

James A. Casey  
Morrison & Foerster, LLP  
2000 Pennsylvania Ave., NW  
Suite 5500  
Washington DC 20006

Kathleen Q. Abernathy  
AirTouch Communications, Inc.  
1818 N Street, NW  
Washington DC 20036

David A. Gross  
AirTouch Communications, Inc.  
1818 N Street, NW  
Washington DC 20036

William B. Barfield  
BellSouth Corporation  
1155 Peachtree Street, NE  
Suite 1800  
Atlanta, GA 30309-2641

Jim Llewellyn  
BellSouth Corporation  
1155 Peachtree Street, NE  
Suite 1800  
Atlanta, GA 30309-2641

David G. Frolio  
BellSouth Corporation  
1133 21st Street, NW  
Suite 900  
Washington DC 20036

Jill Lyon  
Vice President for Regulatory Relations  
AMTA  
1150 18th Street, NW Suite 250  
Washington DC 20036

Kevin C. Gallagher  
Senior VP--Gen. Counsel and Sec.  
360° Communications Company  
8725 Higgins Road  
Chicago, IL 60631

Robert S. Foosaner  
VP and Chief Regulatory Officer  
Nextel Communications, Inc.  
1450 G Street, NW Suite 425  
Washington DC 20005

Lawrence R. Krevor  
Director--Government Affairs  
Nextel Communications, Inc.  
1450 G Street, NW Suite 425  
Washington DC 20005

Laura L. Holloway  
General Attorney  
Nextel Communications, Inc.  
1450 G Street, NW Suite 425  
Washington DC 20005

Andre J. Lachance  
GTE Service Corporation  
1850 M Street, NW Suite 1200  
Washington DC 20036

Peter M Connolly  
Koteen & Naftalin  
1150 Connecticut Ave., NW  
Washington DC 20036

Linda L. Oliver  
Hogan & Hartson, LLP  
555 Thirteenth Street, NW  
Washington DC 20004

David L. Sieradzki  
Hogan & Hartson  
555 Thirteenth Street, NW  
Washington DC 20004

James S. Britton  
Staff Attorney  
Meretel Communications, LP  
913 S. Burnside Ave.  
Gonzales, LA 70737

Christopher J. Wilson  
Frost & Jacobs LLP  
2500 PNC Center  
201 East Fifth Street  
Cincinnati, Ohio 45202

Jack B. Harrison  
Frost & Jacobs LLP  
2500 PNC Center  
201 East Fifth Street  
Cincinnati, Ohio 45202

Cathleen A. Massey  
Vice President--External Affairs  
AT&T Wireless Services, Inc.  
1150 Connecticut Ave., NW 4th Floor  
Washington DC 20036

Douglas I. Brandon  
Vice President--External Affairs  
AT&T Wireless Services, Inc.  
1150 Connecticut Ave., NW 4th Floor  
Washington DC 20036


Carole C. Harris  
McDermott, Will & Emery  
600 13th Street, NW  
Washington DC 20005-3096

Christine M. Gill  
McDermott, Will & Emery  
600 13th Street, NW  
Washington DC 20005-3096

Daniel R. Ball  
McDermott, Will & Emery  
600 13th Street, NW  
Washington DC 20005-3096

John Reardon  
Mobex Communications, Inc.  
1150 18th Street, NW  
Suite 250  
Washington DC 20036

Mark J. O'Connor  
Piper & Marbury, LLP  
1200 19th Street, NW  
Seventh Floor  
Washington DC 20036

  
Cleveland Lawrence III